

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
vs.	§	Case No. 4:06cr16
	§	(Judge Schell)
KELLEY LYNN BERRY (8)	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on March 28, 2012, to determine whether Defendant violated her supervised release. Defendant was represented by Denise Benson. The Government was represented by Ernest Gonzalez.

On October 16, 2006, Defendant was sentenced by the Honorable Richard A. Schell to fifty-seven (57) months' custody followed by five (5) years of supervised release for the offense of Conspiracy to Manufacture, Distribute or Possess with Intent to Manufacture, Distribute or Dispense Methamphetamine. On October 26, 2009, Defendant completed her period of imprisonment and began service of her supervised term.

On February 22, 2012, the U.S. Probation Officer executed an Amended Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated various mandatory, standard, and special conditions. Violation allegations one and four were dismissed by the Government. The petition alleged violation of the following additional mandatory condition: defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within fifteen days of release from imprisonment and at least two periodic tests thereafter, as determined by the court. The petition also alleged violation of the following standard

condition: that defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substances or any paraphernalia related to any controlled substances, except as prescribed by a physician.

Prior to the Government putting on its case, Defendant entered a plea of true to the remaining allegations. The Court recommends that Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Judge revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of fifteen (15) months with no supervised release to follow. It is also recommended that Defendant be housed in the Fort Worth unit.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

SIGNED this 2nd day of April, 2012.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE